

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ERIN E. KIS, :
on behalf of herself and all :
others similarly situated, :
Plaintiffs, : Case Nos. 4:18-cv-54
vs. : 4:18-cv-434
COVELLI ENTERPRISES, INC., :
Defendant. :
OPINION & ORDER

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In January 2019, the Court ordered Defendant Covelli Enterprises, Inc. to un-redact some 1,200 documents it had partially withheld.¹ If Defendant believed any of those documents were privileged, the Court required it to produce them for *in camera* review.² In February 2019, Defendant produced fifty-two such documents, claiming attorney-client and work product privilege.

The party asserting privilege bears the burden of proving it exists.³ Because this case is here under the Court's federal question jurisdiction, the Court applies federal common law in determining whether the documents are privileged.⁴

"Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the

¹ Doc. 157.

² *Id.*

³ *United States v. Dakota*, 197 F.3d 821, 825 (6th Cir. 1999).

⁴ *Hancock v. Dodson*, 958 F.2d 1367, 1372–73 (6th Cir. 1992). See Fed. R. Evid. 501.

client, are [protected by attorney-client privilege].⁵ A document is also protected as “work product” if it was prepared in anticipation of litigation by a party or his representative.⁶

Forty-two of Defendant’s submitted documents are privileged under either the attorney-client privilege or as work product. Ten are not.

Defendant argues that all ten are privileged because they are attached to an attorney-client communication.⁷ However, the mere fact that a document is attached to a privileged communication is not enough.⁸ Further, it appears that these are either independent documents created outside the attorney-client relationship or documents Defendant sent to Plaintiffs’ counsel.⁹ Defendant has thus not shown that they are privileged.

Defendant claims that one of the ten documents is also protected as “attorney work product.”¹⁰ Nothing, however, indicates that this document—a stock letter to Defendant’s employees about a pay-change—was prepared in anticipation of litigation.¹¹

Thus, the Court ORDERS Defendant to produce to Plaintiffs non-redacted versions of the documents Defendant labeled DEFPRIV03, DEFPRIV04, DEFPRIV08, DEFPRIV16, DEFPRIV24, DEFPRIV25, DEFPRIV32, DEFPRIV34, DEFPRIV35, and DEFPRIV 45.

IT IS SO ORDERED.

Dated: March 13, 2019

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

⁵ *Reed v. Baxter*, 134 F.3d 351, 355 (6th Cir. 1998) (internal numbering omitted).

⁶ Fed. R. Civ. P. 26(b)(3).

⁷ Defendant labels these documents as: DEFPRIV03, DEFPRIV04, DEFPRIV08, DEFPRIV16, DEFPRIV24, DEFPRIV25, DEFPRIV32, DEFPRIV34, DEFPRIV35, and DEFPRIV45.

⁸ E.g., *Hilton-Roar v. State & Federal Communications Inc.*, No. 5:09-cv-1004, 2010 WL 1486916, at *7 (N.D. Ohio April 13, 2010).

⁹ The documents include: a stock letter to employees about a pay-change, a wage conversion formula, an employee’s wage history, a letter to Plaintiffs’ counsel, and an apparent tolling agreement with Plaintiffs.

¹⁰ Defendant labels this document as: DEFPRIV45.

¹¹ The document appears to have been drafted more than a year before this case began and its content appears largely unrelated to this suit.